

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA  
SECOND APPELLATE DISTRICT  
DIVISION SIX

THE PEOPLE,

Plaintiff and Respondent,

v.

MICHELLE DIANE WILLIAMS  
GARCIA ,

Defendant and Appellant.

2d Crim. No. B209746  
(Super. Ct. No. 2007007674)  
(Ventura County)

Michelle Diane Williams Garcia appeals from the judgment entered following her guilty plea to one count of embezzlement (Fin. Code, § 3531), two counts of forgery (Pen. Code, § 470, subd. (d)),<sup>1</sup> one count of grand theft (§ 487, subd. (a)), and five counts of filing a false income tax return. (Rev. & Tax. Code, §§ 19705, subd. (a)(1), 19706.) As to the embezzlement, forgery, and grand theft counts, appellant admitted enhancement allegations that (1) she had engaged in a pattern of related felony conduct involving the taking of more than \$500,000 (§ 186.11, subd. (a)(2)), and (2) the aggregate losses to the

---

<sup>1</sup> All statutory references are to the Penal Code unless otherwise stated.

victims exceeded \$1,000,000 and arose from a common scheme or plan. (§ 12022.6, subds. (a)(3) & (b).)<sup>2</sup>

Appellant was sentenced to prison for 10 years, 4 months. The sentence included a two-year term for the \$500,000 enhancement on the embezzlement count (§ 186.11, subd. (a)(2)) plus a three-year term for the \$1,000,000 enhancement on the same count. (§ 12022.6, subds. (a)(3) & (b).) After sentencing, appellant obtained a certificate of probable cause. (§ 1237.5.) Appellant contends that, by imposing prison terms for both enhancements, the trial court violated the proscription against multiple punishment of section 654 as well as her constitutional rights. We affirm.

### *Discussion*<sup>3</sup>

#### *Section 654*

"[S]ection 654 prohibits multiple punishments for offenses committed during a single course of conduct if the offenses were incidental to a single objective. [Citation.]" (*People v. Watts* (1999) 76 Cal.App.4th 1250, 1264.)<sup>4</sup> Our Supreme Court has not resolved the issue whether section 654 applies generally to enhancements. (*People v. Palacios* (2007) 41 Cal.4th 720, 728.) We need not resolve this issue here because "[w]e are persuaded that, in enacting section [186.11, subdivision (b)(2)], the Legislature made clear that it intended to create a sentencing scheme unfettered by section 654." (*Id.*, at pp. 727-728.) Section 186.11, subdivision (b)(2), provides: "The additional prison term provided in paragraph (2) of subdivision (a) [the \$500,000 enhancement] shall be in

---

<sup>2</sup> At the time of appellant's offenses, section 12022.6, subdivision (a)(3), provided that the aggregate loss must exceed \$1,000,000. In 2007, the subdivision was amended to provide that the loss must exceed \$1,300,000. (Stats.2007, c. 420, § 1.)

<sup>3</sup> Because the issues on appeal involve legal questions that do not turn on the facts underlying appellant's offenses, we omit the customary statement of facts.

<sup>4</sup> Section 654, subdivision (a), provides in relevant part: "An act or omission that is punishable in different ways by different provisions of law shall be punished under the provision that provides for the longest potential term of imprisonment, but in no case shall the act or omission be punished under more than one provision."

addition to any other punishment provided by law, including Section 12022.6 [the \$1,000,000 enhancement], and shall not be limited by any other provision of law."

*Constitutional Rights*

Appellant argues that the imposition of prison terms for both enhancements "doubly punished him [sic, her] for the same conduct involving a single victim." This double punishment violated the "due process protection against double punishment[,] the double jeopardy protections, equal protection, and the prohibition against cruel or unusual punishment" of both the federal and state constitutions. Appellant's argument lacks merit.

The federal double jeopardy clause protects against multiple punishments for the same offense. (*People v. Sloan* (2007) 42 Cal.4th 110, 120-121.) "With respect to cumulative sentences imposed in a single trial, the Double Jeopardy Clause does no more than prevent the sentencing court from prescribing greater punishment than the legislature intended." (*Missouri v. Hunter* (1983) 459 U.S. 359, 366 [103 S.Ct. 673, 74 L.Ed.2d 535].) "Where, as here, a legislature specifically authorizes cumulative punishment under two statutes, regardless of whether those two statutes proscribe the 'same' conduct . . . , a court's task of statutory construction is at an end and the prosecutor may seek and the trial court or jury may impose cumulative punishment under such statutes in a single trial." (*Id.*, 459 U.S. at pp. 368-369; see also *People v. Sloan, supra*, 42 Cal.4th at p. 121 ["Federal law, like California statutory law, clearly recognizes that cumulative punishment may be imposed under two statutes, even where they proscribe the same conduct, if the Legislature has specifically authorized cumulative punishment"].)

Thus, the trial court's imposition of prison terms for both enhancements did not violate the federal double jeopardy clause because the Legislature specifically authorized this cumulative punishment in section 186.11, subdivision (b)(2). Pursuant to the same reasoning, we conclude that the imposition of prison terms for both enhancements also did not violate the state double jeopardy clause. Because appellant's cumulative punishment did not implicate double jeopardy protections, it complied with due process.

(See *People v. Parrish* (1985) 170 Cal.App.3d 336, 344 ["Where it is clear that the Legislature has intended for punishment of a violation of two statutes to be cumulative, regardless of whether these two statutes proscribe the same conduct, cumulative punishment may be imposed under the statutes in a single trial without offending the due process clause"].)

We reject appellant's contention that the imposition of prison terms for both enhancements violated equal protection and constituted cruel and/or unusual punishment. Appellant has failed to articulate any basis for his equal protection claim. To establish his claim of cruel and/or unusual punishment, appellant must show that " 'the penalty imposed is "grossly disproportionate to [his] individual culpability" [citation], so that the punishment " ' "shocks the conscience and offends fundamental notions of human dignity" ' " [citation] . . . . ' [Citation.]" (*People v. Boyer* (2006) 38 Cal.4th 412, 488.) No such showing has been made.

*Disposition*

The judgment is affirmed.

NOT TO BE PUBLISHED.

YEGAN, Acting P.J.

We concur:

COFFEE, J.

PERREN, J.

Bruce A. Clark, Judge

Superior Court County of Ventura

---

Jolene Larimor, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Senior Assistant Attorney General, Scott A. Taryle, Supervising Deputy Attorney General, John R. Gorey, Deputy Attorney General, for Plaintiff and Respondent.